UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/776
21 November 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 776

Case No. 485: KIOKO

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 15 May 1992, John K. Kioko, a former staff member of the United Nations Environment Programme (hereinafter referred to as UNEP), filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 December 1992, 31 March, 30 June and 31 December 1993, the time-limit for the filing of application with the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, suspended the time-limit for the filing of an application with the Tribunal until 31 May 1995;

Whereas, on 31 May 1995, the Applicant again filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 24 August 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested, in accordance with article 12 of the Statute of the

Tribunal, the revision of Judgement No. 532, rendered by the Tribunal on 24 October 1991;

Whereas the application contained pleas which requested the Tribunal to find:

"...

(a) That the Executive Director's decision to dismiss the Applicant was done without authority;

...

(d) ... that the lack of authority of the Executive Director of UNEP to properly terminate Applicant's permanent appointment was only brought to the Applicant's attention after Judgement No. 532 had been taken and as a contingence;

(e) That the existence of this new evidence warrants revision of Judgement No. 532;

(f) That the Applicant should be compensated for lost wages for the period of time from when he was illegally separated from the Organization on 18 May 1984 and 14 June 1990, when the Executive Director was given the authority to terminate him."

Whereas the Respondent filed his answer on 3 October 1995;

Whereas the Applicant filed written observations on 10 November 1995;

Whereas the facts in this case as set forth in Judgement No. 532 are as follows:

The Applicant appealed the termination of his permanent appointment in UNEP. In its Judgement No. 456, Kioko, rendered on 2 November 1989, the Tribunal ordered the rescission of the decision to terminate the Applicant's service with UNEP. In accordance with article 9.1 of its Statute, the Tribunal ordered the Respondent to pay the Applicant 18 months' net base salary (less 6 months' salary already paid) if the Secretary-General decided to take no further

action in the case (paragraph XVI). The Secretary-General elected to pay the compensation fixed by the Tribunal.

The Applicant appealed to the Tribunal again on 22 October 1990, arguing that the Respondent had not implemented Judgement No. 456 correctly. In its Judgement No. 532, Kioko, rendered on 24 October 1991, the Tribunal held that the Respondent had not implemented Judgement No. 456 in a timely manner and ordered the Respondent to pay the Applicant an additional three months' net base salary for the "relatively short delay" in implementing the Judgement (paragraph IX).

Whereas the Applicant's principal contention is:

The authority to terminate permanent appointments for unsatisfactory service was not delegated to the Executive Director at the time he separated the Applicant from service on 18 May 1984. This fact constitutes new evidence that was brought to the Applicant's attention only after the Tribunal had rendered Judgement No. 532, Kioko (1991). Consequently, revision of Judgement No. 532 is warranted.

Whereas the Respondent's principal contention is:

The Applicant's request does not satisfy the provisions of article 12 of the Tribunal's Statute.

The Tribunal, having deliberated from 31 October to 21 November 1996, now pronounces the following judgement:

I. The Applicant requests revision of Judgement No. 532, under article 12 of the Tribunal's Statute. The Applicant alleges that, after Judgement No. 532 was rendered, he became aware that his separation from service was decided upon by the Executive Director

of UNEP who, at the time, was not competent to take such a decision. The Applicant claims that this constitutes a new fact, unknown to him at the time this Judgement was rendered, and that, therefore, article 12 of the Tribunal's Statute is applicable.

II. The Tribunal notes that the Applicant's dismissal was not the issue on which the Tribunal ruled in Judgement No. 532, which dealt solely with the manner in which Judgement No. 456 had been implemented.

Any new circumstances in connection with his dismissal, that may have become known to the Applicant, in no way affect Judgement No. 532, thus rendering article 12 inapplicable.

III. For the foregoing reason, this application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary